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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,267	04/28/2005	Miyuki Hagiwara	HOSHINO.001 AUS	7346

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EXAMINER
WEIER, ANTHONY J

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 03/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/533,267	HAGIWARA ET AL.	
	Examiner	Art Unit	
	Anthony Weier	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 January 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7* is/are pending in the application.

4a) Of the above claim(s) *1* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2-7* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Species B (claims 2-7) in the reply filed on 1/9/06 is acknowledged.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear as to the scope of claim 5. Is it related to a method of producing soybean powder or a method of using soybean powder in making soybean milk? If it is the latter, said claim may be subject to a further restriction requirement as the method of producing the soybean and method of using same would be distinct. For the purpose of this examination, the claims has been considered in light of a method of producing a soybean powder wherein same is cable of use in producing a soybean milk.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 2, 4, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hawley et al taken together with JP 9-191848 or JP 11-332496 and further in view of Boatright.

Hawley et al discloses a process of producing a soybean powder wherein soybean is crushed, produced into a slurry that is steam treated at a temperature of as high as 140 C wherein said slurry is dried into a powder form capable of use as a soymilk product wherein said steam treatment is effected at least in part at atmospheric pressure It should be noted that Hawley et al treats said soybean to eliminate the poor tastes and soy odors that are normally attributed to soybeans (e.g. col. 6, lines 5-37; col. 8, lines 12-40).

Hawley et al is silent regarding treatment of lipoxygenase-free soybean. However, it is well known to powderize soybean that is lipoxygenase free as taught, for example, by JP 9-191848 or JP 11-332496. Moreover, although it is well known that working with lipoxygenase-free soybeans produces less beany odor, it is also known that just because the soybean is lipoxygenase-free, odors are not eliminated altogether. This suggestion is set forth in col. 1 of Boatright (see to Torres-Penarada work). It would have been obvious to one having ordinary skill in the art at the time of the invention to have further employed the steam treatment of Hawley et al to further reduce the odors related to processing soybeans which would still be present in the lipoxygenase-free soybeans.

5. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Visser et al taken together with either one of JP 8-196228 or JP 9-191848.

Visser et al discloses a process wherein a powder material is agglomerated (e.g. granulated) between two moving surfaces in such manner as to produce agglomerates that are uniform in size. Although the apparatus language of instant claims 6 and 7 have been considered and appear to describe a different device from that of Visser et al, it should be noted that the instant claims are method claims and it is not seen where the actual method in shaping the agglomerates differs from that resulting from the use of the apparatus as recited in the instant method claims.

Visser et al is silent regarding the treatment of soybean powder per se. However, it is well known to agglomerate (or granulate) soybean powder as taught, for example, by either one of JP 8-196228 or JP 9-191848. Absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time of the invention to have applied the process of Visser et al to soybean powder as a matter of preference as to the material to be granulated.

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied in paragraph 4 above further in view of Visser et al taken together with either one of JP 8-196228 or JP 9-191848.

The claims further call for the process steps of granulating said soybean powder. Visser et al discloses a process wherein a powder material is agglomerated (e.g. granulated) between two moving surfaces in such manner as to produce agglomerates that are uniform in size. Although the apparatus language of instant claims 3 has been considered and appear to describe a different device from that of Visser et al, it should be noted that the instant claims are method claims and it is not seen where the actual

method in shaping the agglomerates differs from that resulting from the use of the apparatus as recited in the instant method claims. In any event, it would have been obvious to one having ordinary skill in the art at the time of the invention to have granulated/agglomerated the soybean material of Hawley et al (as modified above) as a matter of preference of art recognized further processing steps. It should be noted also that although Visser et al is silent regarding the treatment of soybean powder per se. However, it is well known to agglomerate (or granulate) soybean powder as taught, for example, by either one of JP 8-196228 or JP 9-191848. Absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time of the invention to have applied the process of Visser et al to soybean powder as a matter of preference as to the material to be granulated as known in general in the art.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony Weier
March 17, 2006

Anthony Weier
Primary Examiner
Art Unit 1761